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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,117	01/04/2002	Steven Ausnit	769-222 Div.2	1073
29540	7590	01/25/2007		
DAY PITNEY LLP 7 TIMES SQUARE NEW YORK, NY 10036-7311			EXAMINER SIPOS, JOHN	
			ART UNIT	PAPER NUMBER
			3721	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/040,117

Applicant(s)

AUSNIT, STEVEN

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 40-42 and 48-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-42 and 48-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

The examinations of Reexamination applications 90/007203 and 90/007204 that bear on the patentability of the claims of the instant application have been completed and in each case a Notice of Intent to Issue a Reexam Certificate has been mailed out on amended claims. Therefore, the rejections made in the last Office action are considered proper and are repeated.

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***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

**Claims 40-42 and 48-50** are rejected under **35 U.S.C. ' 102(b)** as being clearly anticipated by the patent to Thomas (5,713,669). The patent to Thomas discloses the method of opening bags that comprise a slider/zipper and a tamper evident structure. It discloses bags that comprise a package body, zipper closure with two mating profiles (24/28), a slider on the closure (32) for opening and closing the closure and bag, a tamper evident structure (36/38) encasing the zipper closure and perforation line (40). The opening process comprises removing the tamper evident structure along the perforation line and moving the slider to disengage the zipper profiles to open the bag. See column 4, line 6 et seq. of Thomas.

**Claims 40-42 and 48-50** are rejected under **35 U.S.C. ' 102(e)** as being clearly anticipated by the patent to Stolmeier (6,257,763). The patent to Stolmeier discloses the method of opening bags that comprise a slider/zipper and a tamper evident structure. This patent discloses bags that comprise a package body, zipper closure with two mating profiles (70), a slider on the closure (71) for opening and closing the closure and bag, a tamper evident structure (60) encasing the zipper closure and perforation line (72). The opening process comprises removing the tamper evident structure along the perforation line and moving the slider to disengage the zipper profiles to open the bag. See column 3, line 59 et seq.

**Claims 40 and 48** are rejected under **35 U.S.C. ' 102(e)** as being clearly anticipated by the patent to Thieman (5,956,924). The patent to Thieman discloses the method of opening bags that comprise a slider/zipper and a tamper evident structure. This patent discloses bags that comprise a package body, zipper closure with two mating profiles (32/34), a slider on the closure (48) for opening and closing the closure/bag and a tamper evident structure (127) encasing the zipper closure. The opening process comprises removing the tamper evident structure and moving the slider to disengage the zipper profiles to open the bag. See column 6, line 6 et seq.

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**Claims 41,42,49 and 50** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Thieman (5,956,924) in view of Hustad (5,456,928). The patent to Thomas lacks the use of perforations lines. The patent to Hustad discloses the method of opening bags that comprise a zipper and a tamper evident structure. This patent discloses bags that comprise a package body, zipper closure with two mating profiles (17/18), and a tamper evident structure (integral 21 or separate tape 31) encasing the zipper closure and perforation line (25,33) to ease the removal of the tamper evident structure. The opening process of Hustad comprises removing the tamper evident structure along the perforation line and moving the slider to disengage the zipper profiles to open the bag. It would have been obvious to one skilled in the art to provide the Thieman bag with perforation lines as shown by Hustad to ease the removal of the tamper evident structure. Note that both the Thieman and Hustad methods use a separate tamper evident tape.

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***RESPONSE TO APPLICANT'S ARGUMENTS***

Applicant's arguments with respect to the claims have been considered but are not persuasive.

Applicant's argument that since the instant claims were copied from patents wherein these claims were found allowable is not convincing. Upon renewed filing of the claims a complete examination is made of the claims. The examination includes a review of the claims for rejections based on formal matters as well as prior art. The rejections made in the last Office action are considered proper and are maintained.

Contrary to Applicant's argument that Thieman does not appear to remove the tamper evident structure as recited in the claims, Thieman clearly states and shows in Figure 5 the application of a separate structure 127 "over the exterior of slider" (see column 6, line 10). Since the tamper evident structure is placed over the slider it needs to be removed before the slider can be accessed.

Regarding the Stolmeier reference, it is clear from the drawings (for example, Figure 7) and the specification (column 3, line 59 et seq.) that perforations 72 are provided "which facilitates removing the tamper evident sheet 60" thereby allowing access to the slider.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3721

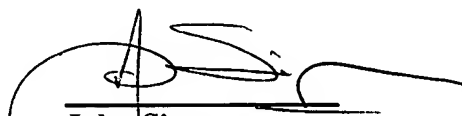
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Peter Vo, can be reached at (703) 308-1789.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**

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